

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

Filed March 1, 2004

SUPERIOR COURT

**STATE OF RHODE ISLAND, by and
through PATRICK C. LYNCH,
Attorney General,**

Plaintiff

v.

**LEAD INDUSTRIES ASSOCIATION,
INC., et al.**

Defendants

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C.A. No. 99-5226

DECISION

SILVERSTEIN, J. The captioned matter presently is before the Court for decision on Plaintiff's Motion to Strike Defendant's Jury Demand, and to amend the scheduling order.

Following extensive briefing, almost two days of oral argument, the filing of plaintiff's supplemental memoranda, and the entry of an order dismissing certain counts in the Second Amended Complaint pending before the Court, the Court took this matter under advisement.

This Court notes that at the conclusion of the hearing hereon in view of (1) a scheduled trial date with opening statements to commence on April 5, 2004 with many preliminary matters to occur prior thereto; and (2) the lack of time, predicated on the sheer volume of materials called to the defendants' attention, for it, within a few days, to prepare properly a reasoned decision, it indicated its intent at least to announce its ultimate ruling on the motion at 4:00 p.m. on March 1, 2004, and thereafter and as expeditiously as possible, to file and distribute to counsel a fully articulated and reasoned decision.

Accordingly, the Court now notes that it will, consistent with the holdings of our Supreme Court in the cases of Maryland Casualty Company v. Sasso, 98 R.I. 483, 204 A.2d 821 (R.I. 1964), and DePardo & Sons, Inc. v. Lauzon, 708 A.2d 165 (R.I. 1998), as well as the provisions of Article I, Section 15 of the Constitution of the State of Rhode Island and Providence Plantations (Constitution), deny Plaintiff's Motion to Strike Defendants' Jury Demand. This denial, which will be more fully explicated in the decision to be filed as aforesaid, is predicated on what the Court finds is a constitutional right of defendants to have issues of fact determined by a jury as at common law at the time of the adoption of the Constitution in 1842, which became operative on May 2, 1843, that is to say such facts in a case of this nature as then would have been determined by a jury (citing DePardo & Sons, Inc., *supra* at 171.)

This Court notes that the captioned matter will be before it in connection with certain pre-trial motions on Wednesday, March 3, 2004. At that time the Court intends to take up such updating of the existing scheduling order as may be appropriate.